

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

[Filed: December 14, 2021]

ANNE MCCARVER  
*Plaintiff,*

v.

LUX RENOVATIONS, LLC,  
*Defendant.*

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C.A. No. NC-2021-0255

**DECISION**

**PROCACCINI, J.** Before the Court is Defendant’s Motion to Dismiss Plaintiff’s Complaint or, in the alternative, a Motion to Stay the Action pursuant to G.L. 1956 § 10-3-3, requesting a stay of action on issues referable to arbitration. The basis for the motion is whether the waiver of arbitration agreement that was executed by both parties was limited to the Contractors’ Registration and Licensing Board (CRLB) proceedings. Jurisdiction is pursuant to §10-3-3 and the inherent powers of the Superior Court to control its own docket.

**I**

**FACTS**

On April 7, 2019, Anne McCarver (Plaintiff) entered into a contract with Lux Renovations, LLC (Defendant) to complete basement renovations and comply with applicable building codes. The contract contained an arbitration clause that stated all disputes between the parties that cannot be resolved shall be submitted to binding arbitration. *See* Compl. Ex. A (Contract), at 5. On August 7, 2019, Plaintiff filed a complaint with the CRLB to enforce the contract due to Defendant’s failure to complete the renovations and comply with the applicable building codes. Pursuant to the

CRLB proceedings, both parties signed the waiver of arbitration agreement that stated the parties agreed that the arbitration clause contained in the contract was waived. *See* Pl.’s Mem. Ex. A (Waiver Agreement), at 9, 11.

On August 3, 2021, Plaintiff filed suit against Defendant for breach of contract for failing to complete basement renovations and comply with applicable building codes. Defendant has alleged that Plaintiff’s claims arose from the renovation contract, which contained a valid and binding arbitration clause that required the claims to be dismissed or stayed pursuant to § 10-3-3. Plaintiff filed an Objection to Defendant’s Motion to Dismiss or to Stay the Action, contending that the renovation contract no longer contained an arbitration clause based on the Waiver Agreement executed by both parties.

## II

### STANDARDS OF REVIEW

#### A

##### **Motion to Dismiss**

In making a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, a court “‘assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.’” *Giuliano v. Pastina*, 793 A.2d 1035, 1036 (R.I. 2002) (quoting *Martin v. Howard*, 784 A.2d 291, 297-98 (R.I. 2001)). Thus “[t]he sole function of a motion to dismiss is to test the sufficiency of the complaint.” *Palazzo v. Alves*, 944 A.2d 144, 149 (R.I. 2008) (quoting *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)). However, “[t]here is . . . a narrow exception for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs’ claim; or for documents sufficiently referred to in the complaint.” *Chase v.*

*Nationwide Mutual Fire Insurance Co.*, 160 A.3d 970, 973 (R.I. 2017) (internal quotations omitted). Nevertheless, “a Rule 12(b)(6) motion to dismiss is appropriate ‘when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.’” *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009). “[B]ut unless amendment could avail the plaintiff nothing, the order of dismissal should usually be with leave to amend.” Robert B. Kent et al., *Rhode Island Civil Procedure*, § 12:9 (Dec. 2020 Update).

## **B**

### **Motion to Stay**

The Rhode Island Legislature enacted our Arbitration Act in 1929, which endorses arbitration as a desirable method of dispute resolution. *See* § 10-3-1; *see also Pepin v. American Universal Insurance Co.*, 540 A.2d 21, 22 (R.I. 1988); *Soprano v. American Hardware Mutual Insurance Co.*, 491 A.2d 1008, 1010 (R.I. 1985). “In enacting § 10-3-2, the Legislature intended to create a right to binding arbitration.” *Pepin*, 540 A.2d at 22. Section 10-3-3 of the Rhode Island General Laws states as follows,

“If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the suit is pending, upon being satisfied that the issue involved in the suit or proceeding is referable to arbitration under such an agreement, shall, on application of one of the parties, stay the trial of the action until the arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.” Section 10-3-3.

The Rhode Island Supreme Court has noted “[n]o one is under a duty to arbitrate unless with clear language he [or she] has agreed to do so.” *Stanley-Bostitch, Inc. v. Regenerative Environmental Equipment Co., Inc.*, 697 A.2d 323, 326 (R.I. 1997) (quoting *Bush v. Nationwide Mutual Insurance Co.*, 448 A.2d 782, 784 (R.I. 1982)). However, “[d]espite the policies favoring

arbitration of contractual disputes, . . . it has long been held that parties are free to waive their rights to arbitration under a contract and proceed to present their contractual dispute to a court.” *Jones Motor Co., Inc., v. Chauffeurs, Teamsters & Helpers Local Union No. 633 of New Hampshire*, 671 F.2d 38, 42 (1st Cir. 1982) (internal citation omitted).

### III

#### ANALYSIS

Defendant argues that Section 5-65-12.1 limits the waiver of arbitration agreement to the CRLB proceedings because Plaintiff could not bring suit in Superior Court until after the CRLB rendered a final order. *See* Def.’s Reply. Thus, Defendant contends, the arbitration clause in the renovation contract is effective and binding on the parties, mandating the resolution of Plaintiff’s claims through arbitration.

Plaintiff asserts that Section 5-65-12.1 permits filing of a civil action in Superior Court in lieu of or as a supplement to the CRLB proceedings and contains no language stating a waiver is exclusive to the CRLB proceedings. *See* Pl.’s Mem.

Section 5-65-12.1 states that

“Any person having a claim against a contractor of the type referred to in § 5-65-11, may, in addition to any other common law action or administrative remedy, bring an action under the rules of civil procedure in the superior court of the county in which the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business. A civil action filed in court under this section may be instituted in lieu of, or as a supplement to, the contractors’ registration board’s administrative proceedings and penalties only to the extent that the board’s final orders are insufficient to satisfy the claimant’s damages.” Section 5-65-12.1

Plaintiff argues that the statutory language of Section 5-65-12.1 permits filing an action in Superior Court in lieu of or as a supplement to the CRLB proceedings only to the extent that

Plaintiff finds the CRLB's findings to be insufficient to satisfy Plaintiff's damages. *See* Pl.'s Mem. Plaintiff acknowledged on the record that returning this motion to Superior Court is not a complete re-litigation of the claims between the parties but is an attempt to obtain the satisfactory redress afforded under the statute. In contrast, Defendant argued that the Waiver Agreement is limited under § 5-65-12.1 until the CRLB issued a final order. *See* Def.'s Reply. Thus, the Waiver Agreement signed by the parties did not extend outside the CRLB proceedings.

The Court respectfully disagrees with Defendant's argument that § 5-65-12.1 confines the Waiver Agreement to the CRLB proceedings until the CRLB issues a final order. The Court reads the plain language of the statute as permitting the filing in Superior Court "in lieu of, or as a supplement to" the CRLB proceedings. Section 5-65-12.1; *see Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996) ("[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.") (alteration omitted). The Court finds § 5-65-12.1 does not limit the Waiver Agreement to the CRLB proceedings and the Plaintiff's action is permitted to proceed, but only to the extent the Plaintiff finds the CRLB's findings are insufficient to satisfy the damages. Based on the Court's statutory interpretation of § 5-65-12.1, there is no basis for Defendant's Motion to Dismiss Plaintiff's Complaint or, in the alternative, Motion to Stay the Action.<sup>1</sup>

Furthermore, the language of the Waiver Agreement signed by both parties did not limit the waiver to the CRLB proceedings. The agreement reads that "Pursuant to Contractor's Registration and Licensing Board General Rules and Regulations for Registration, Licensing and

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<sup>1</sup> The Court's decision is more limited than a reading of the Complaint on its face and relies on the language of the statute to provide direction as to Plaintiff's claims in Superior Court.

Filing of Claims, Section 1.5.4(B) Processing Claims based on Contracts with Arbitration Agreements, it is hereby agreed that the arbitration clause contained in our contract is waived.” *See* Waiver Agreement. The language in the agreement does not indicate any limitation of the waiver as only applying to the CRLB proceedings. Relying on *Jones Motor Co.*, cited *supra*, this Court finds that the parties were free to waive the right to arbitration under the renovation contract, as evidenced by the language of the Waiver Agreement and its execution.

Ordinarily, the motion to dismiss would be converted into a motion for summary judgment when the Court considered the Waiver Agreement was outside the pleadings. *See Chase*, 160 A.3d at 973. However, there is a narrow exception for documents that the authenticity is not disputed by the parties. *Id.* The exception applies here because the parties are not disputing the authenticity of the Waiver Agreement but rather the application of said agreement. Therefore, the motion should remain one for dismissal.

#### IV

#### CONCLUSION

For the foregoing reasons, this Court **DENIES** Defendant’s Motion to Dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted or, in the alternative, a Motion to Stay the Action, pursuant to § 10-3-3, requesting a stay of action on issues referable to arbitration. The Court denies the Motion to Dismiss because it is not clear beyond a reasonable doubt that Plaintiff would not be entitled to relief from Defendant based on the undisputed Waiver Agreement and the statutory language of § 5-65-12.1. Additionally, the Court denies the Motion to Stay because parties are free to waive their rights to arbitration as demonstrated by the Waiver Agreement and § 5-65-12.1. Neither the agreement nor the statute limits the waiver to the CRLB proceeding. Accordingly, Plaintiff is permitted to pursue an action

in Superior Court seeking damages to the extent that Plaintiff alleges the CRLB's final orders are insufficient to satisfy Plaintiff's claim for damages.

Counsel for the prevailing party shall present an order in accordance with this Decision.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Anne McCarver v. Lux Renovations, LLC

**CASE NO:** NC-2021-0255

**COURT:** Newport County Superior Court

**DATE DECISION FILED:** December 14, 2021

**JUSTICE/MAGISTRATE:** Procaccini, J.

**ATTORNEYS:**

**For Plaintiff:** Michael E. Monti, Esq.

**For Defendant:** Jason C. Preciphs, Esq.